

ESTTA Tracking number: **ESTTA478561**

Filing date: **06/18/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Cool Gear International, LLC c/o RAF Industries, Inc.
Granted to Date of previous extension	08/22/2012
Address	165 Township Line Road Suite 2100 Jenkintown, PA 19046 UNITED STATES
Attorney information	Roberta Jacobs-Meadway Eckert Seamans Cherin & Mellott, LLC Two Liberty Place 50 S. 16th Street, 22nd Floor Philadelphia, PA 19102 UNITED STATES rjacobsmeadway@eckertseamans.com, blabutta@eckertseamans.com Phone: 215-851-8522

Applicant Information

Application No	85417283	Publication date	04/24/2012
Opposition Filing Date	06/18/2012	Opposition Period Ends	08/22/2012
Applicant	Tabletops Unlimited, Inc. 23000 Avalon Blvd. Carson, CA 90745 UNITED STATES		

Goods/Services Affected by Opposition

Class 021.


All goods and services in the class are opposed, namely: All purpose portable household containers; Bottle jackets, namely, fitted reusable polyethylene coverings used to protect glass bottles containing hazardous liquids; Cold packs used to keep food and drink cold; Collapsible fabric storage container for domestic use; Collapsible storage containers for domestic use; Concession dispensing equipment, namely, portable chilled beverage dispensers; Containers for household or kitchen use; Containers for household or kitchen use not of precious metal; Containers for household use; Containers for ice; Drinking glasses, namely, tumblers; Food and beverage cooling and heating receptacles containing heat exchange fluid for household purposes; Food basters; Food preserving jars of glass; Gas pressurized beverage siphon containers, namely, cream whippers, cream pitchers and soda water holders and gas cartridges sold empty; High temperature nylon and polyethylene pan liners that help prevent food from sticking to the pan while storing, warming and cooking food; Household containers for foods; Household storage containers for pet food; Industrial packaging containers of glass or porcelain; Insulated bags for food or beverage for domestic use; Insulated containers for beverage cans for domestic use; Insulated containers for food or beverage for domestic use; Kitchen containers; Kitchen utensil, namely, non-metal flexible lid designed for draining or pressing liquids from a food can; Lockable non-metal household containers for food; Lotion

containers sold empty for domestic use; Lunch boxes; Manually actuated pump dispensers for attachment to containers for use in dispensing liquids; Non-electric food blenders; Non-electric food mixers; Non-modular containers for use in transportation and storage for household use; Plastic containers in the shape of fruits and vegetables for storing individual fruits and vegetables, and for extending the life of those fruits and vegetables; Plastic containers, namely, cake boxes for household use; Plastic containers, namely, plastic party favor boxes sold empty; Plastic holder for beverage containers to be affixed to walls; Plastic shock-absorbing protection containers for household or domestic use; Plastic storage containers for domestic use; Plastic storage containers for household or domestic use; Plastic storage containers for household use; Portable beverage coolers; Portable beverage dispensers; Portable coldboxes; Portable cooking kits for outdoor use; Portable coolers; Portable coolers, namely, portable beverage or ice coolers mounted on telescoping wheeled caddies; Portable ice chests for food and beverages; Portable plastic containers for storing household and kitchen goods; Pressurized and gravity operated watering and nutrient feeding containers; Reusable self-sealing lids for household use for bowls, cups, containers and the storage of food; Salad bowls; Salad spinners; Servingware for serving food; Servingware for serving food and drinks; Thermal insulated bags for food or beverages; Thermal insulated containers for food or beverages

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85358269	Application Date	06/28/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CEREAL ON THE GO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2005/05/12 First Use In Commerce: 2005/05/12 Plastic food storage containers for household use		

Attachments	85358269#TMSN.jpeg (1 page)(bytes) NOTICE OF OPPOSITION SN 85417283.pdf (5 pages)(390967 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Roberta Jacobs-Meadway/
Name	Roberta Jacobs-Meadway
Date	06/18/2012

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING
TRANSMITTED ELECTRONICALLY TO THE COMMISSIONER FOR
TRADEMARKS - <http://esta.uspto.gov/filing-type.jsp>

By: Mary J. Bolger Kifer

DATE: June 18, 2012

BOX TTAB FEE

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

COOL GEAR INTERNATIONAL, LLC,

OPPOSER,

v.

TABLETOPS UNLIMITED, INC.

APPLICANT.

:
:
:
: Opposition No.: _____
: Mark: **SALAD ON-THE-GO**
: Serial No.: 85/417,283
:
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:

NOTICE OF OPPOSITION

Honorable Commissioner for Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

Cool Gear International, LLC, a Delaware limited liability company, having an address
c/o RAF Industries, Inc., 165 Township Line Road, Suite 2100, Jenkintown, Pennsylvania 19046
("Opposer"), believes that it will be damaged by the registration of the mark **SALAD ON-THE-
GO**, shown in Application Serial No. 85/417,283, for the goods in International Class 21, as
published in the Official Gazette on April 4, 2012, and hereby opposes same.

The grounds for this opposition are as follows:

1. Opposer is and has been for many years engaged in the development, manufacture
and sale of a wide variety of insulated containers and houseware products, and it has built a
successful business in connection therewith.

2. Since at least as early as May 12, 2005, Opposer has used the mark **CEREAL
ON THE GO** as a mark in connection with "plastic food storage containers for household use."

3. Opposer's **CEREAL ON THE GO** mark is inherently distinctive as applied to Opposer's goods.

4. By virtue of Opposer's continuous use in commerce of its **CEREAL ON THE GO** mark in connection with plastic food storage containers for household use, such goods have become well and favorably known to the relevant trade and public under such mark, and the mark is a valuable asset of Opposer.

5. Applicant Tabletops Unlimited, Inc. ("Applicant") has filed an application to register the mark **SALAD ON-THE-GO** for use on the following goods in Class 21:

All purpose portable household containers; Bottle jackets, namely, fitted reusable polyethylene coverings used to protect glass bottles containing hazardous liquids; Cold packs used to keep food and drink cold; Collapsible fabric storage container for domestic use; Collapsible storage containers for domestic use; Concession dispensing equipment, namely, portable chilled beverage dispensers; Containers for household or kitchen use; Containers for household or kitchen use not of precious metal; Containers for household use; Containers for ice; Drinking glasses, namely, tumblers; Food and beverage cooling and heating receptacles containing heat exchange fluid for household purposes; Food basters; Food preserving jars of glass; Gas pressurized beverage siphon containers, namely, cream whippers, cream pitchers and soda water holders and gas cartridges sold empty; High temperature nylon and polyethylene pan liners that help prevent food from sticking to the pan while storing, warming and cooking food; Household containers for foods; Household storage containers for pet food; Industrial packaging containers of glass or porcelain; Insulated bags for food or beverage for domestic use; Insulated containers for beverage cans for domestic use; Insulated containers for food or beverage for domestic use; Kitchen containers; Kitchen utensil, namely, non-metal flexible lid designed for draining or pressing liquids from a food can; Lockable non-metal household containers for food; Lotion containers sold empty for domestic use; Lunch boxes; Manually actuated pump dispensers for attachment to containers for use in dispensing liquids; Non-electric food blenders; Non-electric food mixers; Non-modular containers for use in transportation and storage for household use. Plastic containers in the shape of fruits and vegetables for storing individual fruits and vegetables, and for extending the life of those fruits and vegetables; Plastic containers, namely, cake boxes for household use; Plastic containers, namely, plastic party favor boxes sold empty; Plastic holder for beverage containers to be affixed to walls; Plastic shock-absorbing protection containers for household or domestic use; Plastic storage containers for domestic use; Plastic storage containers for household or domestic use; Plastic storage containers for household use; Portable beverage coolers; Portable beverage dispensers; Portable coldboxes; Portable cooking kits for outdoor use; Portable coolers; Portable coolers, namely, portable beverage or ice coolers mounted on telescoping wheeled caddies; Portable ice chests for food and beverages; Portable plastic containers for storing household and kitchen goods; Pressurized and gravity operated watering and nutrient feeding containers; Reusable self-sealing lids for household use for bowls, cups, containers and the storage of food; Salad bowls; Salad spinners; Servingware for serving food; Servingware for serving food and drinks; Thermal insulated bags for food or beverages; Thermal insulated containers for food or beverages.

6. Applicant filed its application under Section 1(b) on September 8, 2011, and has not yet filed an amendment to allege use.

7. Applicant's **SALAD ON-THE-GO** mark is confusingly similar to Opposer's **CEREAL ON THE GO** mark. The marks are similar in appearance, sound, and connotation: both are composite marks comprising a generic first word identifying a food product to be stored in a container, followed by the identical phrase "on the go." Applicant's use of hyphens in the phrase "on-the-go" is legally insignificant.

8. Applicant proposes to use its mark on goods that are in part identical to those offered under Opposer's mark, namely, plastic food storage containers for household use, and on related products.

9. Applicant's application contains no restrictions on trade channels, so it must be presumed that Applicant's goods will be promoted and sold through all trade channels to all customers appropriate for goods of that type, and as such, Applicant's trade channels will overlap with the trade channels through which Opposer promotes and sells its goods under its **CEREAL ON THE GO** mark.

10. Opposer first used its **CEREAL ON THE GO** mark in commerce prior to the date on which Applicant filed its application to register its **SALAD ON-THE-GO** mark, and upon information and belief, prior to any date on which Applicant first used its **SALAD ON-THE-GO** mark in connection with the goods identified in the subject application.

11. Applicant's **SALAD ON-THE-GO** mark, as applied to the goods identified in the subject application, so resembles Opposer's **CEREAL ON THE GO** mark, as used in connection with Opposer's goods, that it is likely to cause confusion, mistake, and/or deception.

12. If Applicant is permitted to register **SALAD ON-THE-GO** as a mark for the goods set forth in the subject application, confusion of the relevant trade and public is likely to result, which will damage and injure Opposer and its goodwill in its **CEREAL ON THE GO** mark.

13. Upon encountering Applicant's **SALAD ON-THE-GO** mark used in connection with Applicant's goods, potential purchasers are likely to believe in error that such goods are offered by or in association with Opposer, or that Opposer and Applicant are affiliated.

14. Any defect, objection to, or fault found with Applicant's goods sold under the **SALAD ON-THE-GO** mark would reflect on and injure the reputation that Opposer has established for its goods and business.

15. If Applicant is granted a registration for the mark herein opposed, it would obtain thereby at least a *prima facie* exclusive right to use the mark for such goods as are identified in the subject application. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Cool Gear International, LLC prays that registration of the mark of Application Serial No. 85/417,283 for the goods identified therein be refused and that this opposition be sustained.

Respectfully submitted,

Dated: June 18, 2012

By: Bridget H. Labutta
Roberta Jacobs-Meadway
Bridget Heffernan Labutta
ECKERT SEAMANS CHERIN & MELLOTT
Two Liberty Place
50 S. 16th Street, 22nd Floor
Philadelphia, PA 19102
(215) 851-8522

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached
Notice of Opposition was served on Applicant via U.S. Mail and email on the dated listed below:

Alex Tabatabai
Tabletops Unlimited, inc.
23000 Avalon Blvd.
Carson, CA 90745-5017
alex@rockinghamlaw.com

Dated: _____

6-18-12

By: _____

Mary J. Bresnahan